

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 9, 2015 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 16. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2) [eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE DECEMBER 14, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 30, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 7, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 17 THROUGH 31 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON NOVEMBER 16, 2015, AT 2:30 P.M.

November 9, 2015 at 1:30 p.m.

Matters to be Called for Argument

1. 15-27901-A-13 LARRY THOMAS MOTION TO
NSV-1 VALUE COLLATERAL
VS. GM FINANCIAL 10-22-15 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$5,400 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$5,400 of the respondent's claim is an allowed secured claim. When the respondent is paid \$5,400 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

2. 15-27327-A-13 RONALD WHITAKER AND MELBA OBJECTION TO
JPJ-1 MCNEAL-WHITAKER CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-19-15 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to

appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors nothing even though Form 22 shows that the debtor will have more than \$229,000 of projected disposable income over the next five years.

Third, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fourth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,000 is less than the \$2,096.98 in dividends and expenses the plan requires the trustee to pay each month.

Fifth, to pay the dividends required by the plan at the rate proposed by it will take 82 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Sixth, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Seventh, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Chase in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case

will be dismissed on the trustee's ex parte application.

3. 15-21033-A-13 SHAMSHER/JAGJIT SANDHU MOTION TO
TLA-1 SELL
10-19-15 [21]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full. To the extent the sale and the resulting satisfaction of secured claims is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

4. 11-41349-A-13 WATHONE OO MOTION TO
CA-4 INCUR DEBT
10-26-15 [59]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion to incur a loan in order to refinance an existing home loan will be granted. The motion establishes that the new loan will like enhance the ability of the debtor to complete the plan.

5. 15-22353-A-13 LEONOR AMADO
CLH-3

MOTION TO
MODIFY PLAN
9-30-15 [38]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the debtor has failed to make \$7,000 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

6. 15-26954-A-13 SYLVIA GONZALES
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-19-15 [19]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedules I and J do not include a detailed statement of the gross rents and associated expenses earned and incurred in connection with the rental of property. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the

debtor claimed these exemptions. The trustee's objection to the exemptions will be successful. Without exemptions the unsecured creditors would receive \$4,600 in a chapter 7 liquidation. Because the proposed plan will pay only \$371.43, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Fifth, the plan purports to provide for a long term home loan held by Chase Mortgage. However, the plan fails to provide for the maintenance of the ongoing monthly installment due to Chase. Therefore, the plan does not comply with 11 U.S.C. § 1322(b)(2), (b)(5).

Sixth, the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However the fees are approved, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Seventh, to the extent counsel may wish to be paid pursuant to Local Bankruptcy Rule 2016-1, counsel cannot be so paid because counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

8. 15-27061-A-13 GILDARVO VIGIL OBJECTION TO
MDE-1 CONFIRMATION OF PLAN
HSBC BANK USA, N.A. VS. 9-28-15 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained to the extent and for the reasons explained in the ruling on the trustee's objection.

9. 15-23772-A-13 HUMBERTO/CRISTINA ALVAREZ MOTION TO
VACATE DISMISSAL OF CASE
10-19-15 [38]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

This case was filed on May 8, 2015. The plan proposed by the debtor was denied confirmation at a hearing on June 29. The debtor requested leave to file a modified plan. The court set a deadline of 75 days to confirm a modified plan. If one was not confirmed, the case was to be dismissed if requested by the trustee.

The 75 day deadline expired on September 15. No plan was proposed by that deadline. While one was proposed on September 30, it was not accompanied by a motion to confirm it. As a result, the trustee applied for dismissal on October 5 and the case was dismissed the next day.

The debtor now asks to vacate the dismissal. The motion, however, is supported by no admissible evidence explaining the failure to comply with the 75 day deadline set by the court.

The debtor asserts that he was retired from his employment but he did not know what his retirement income would be and he did not receive a response from CalPERS until after the 75 day deadline expired.

First, it is difficult to believe the debtor had no estimate of his retirement income.

Second, in order to confirm a plan by September 15, the debtor had to file and serve a modified plan and motion to confirm it no later than August 3. See Local Bankruptcy Rule 3015-1(d)(1). If the debtor was truly awaiting information from CalPERS and did not have it by August 3 at the latest, the debtor should have applied for an extension of the September 15 deadline. Instead, the debtor did nothing and allowed the case to be dismissed. This is not excusable neglect or mistake. Nothing explains the failure to act proactively and obtain an extension of the deadline set by the court before it expired.

10. 15-26773-A-13 DEMAR RICHARDSON
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-21-15 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the debtor has failed to give the trustee tax returns for a nonfiling spouse. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

11. 14-29778-A-13 EPENESA DRONE
RDW-1
CAM VIII TRUST VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-12-15 [80]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The plan classifies the movant's claim in Class 1 and requires that the post-petition note installments be paid by the trustee to the movant. Because the debtor has

failed to make all plan payments, the trustee was unable to make at least two monthly post-petition monthly mortgage payments to the movant as required by the plan. This default is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

While opposition was filed, it argues only that the debtor should be permitted to confirm a modified plan to resolve the delinquency under the confirmed plan. However, the court denied confirmation of that modified plan at a hearing on November 2.

The co-debtor stay of 11 U.S.C. § 1301 also will be terminated to permit the movant to proceed against its collateral and to collect its claim from any co-debtor who is liable for it. To the extent there may be a deficiency claim post-foreclosure, relief is appropriate because such claim will not be paid in this case. Household Finance Corp. v. Jacobsen (In re Jacobsen), 20 B.R. 648 (B.A.P. 9th Cir. 1982).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

12. 14-31880-A-13 LYNDA WILLIAMS MOTION TO
PGM-4 CONFIRM PLAN
9-25-15 [104]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

Second, beginning in month 15 the plan will not be feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$3,765 is less than the \$9,161 in dividends and expenses the plan requires the trustee to pay each month.

Third, the plan proposes a 61-month duration which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

13. 15-27884-A-13 JOSHUA DAVIDSON
SC-1
EAGLE VISTA EQUITIES, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-23-15 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be dismissed as moot to the extent it asks to terminate the automatic stay and granted in part to the extent it seeks to annul the stay.

This case was dismissed on October 26. Hence, the automatic stay expired upon the dismissal. See 11 U.S.C. § 362(c)(1) & (c)(2).

However, while the case was pending, the movant filed an unlawful detainer action and served it on the debtor. It did so before it received notice of the bankruptcy from the debtor.

The court will annul the automatic stay to ratify the filing of the unlawful detainer complaint but not its service. In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Env'tl. Water Corp. v. City of Riverside (In re Nat'l Env'tl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

Here, the movant or its predecessor acquired title to the debtor's property at a foreclosure before the bankruptcy case was filed. After giving notice to vacate the premises, an unlawful detainer action was filed after the bankruptcy case was filed. Had the movant known of the bankruptcy and asked this court to terminate the automatic stay to allow the unlawful detainer action to be filed and prosecuted, such relief would have been granted. Therefore, the court will ratify the filing of the action but require it to be re-served on the debtor.

Each side shall bear its own fees and costs.

Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Fourth, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Fifth, Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

16. 15-28096-A-13 LAKEISHA MATLOCK MOTION TO
RK-1 EXTEND AUTOMATIC STAY
10-23-15 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

This debtor has filed nine bankruptcy cases since 2008, eight under chapter 13 and one under chapter 7. While the chapter 7 case was prosecuted to a discharge, the debtor has been unable to complete any of her chapter 13 cases. The two most recent prior chapter 13 cases, 15-25312 and 14-32311, were dismissed within one year of this case. Hence, there is no automatic stay unless the court imposes one. See 11 U.S.C. § 362(c)(4). This motion asks the court to impose the automatic stay, arguing the only reason the last case was dismissed is that she did not have competent counsel and instead represented her own interests.

While the debtor may have proceeded pro se in the last case, that does not explain or excuse anything. There were seven earlier chapter 13 cases, all unsuccessful.

Case No. 15-25312, dismissed for failure to pay filing fees;

Case No. 14-32311, dismissed due to debtor's failure to timely confirm a plan;

Case No. 14-23581, dismissed due to debtor's failure to make plan payments;

Case No. 13-35889, dismissed due to debtor's failure to provide tax documents to the trustee and to make plan payments;

Case No. 13-25864, dismissed due to debtor's failure to make plan payments;

Case No. 09-40556, dismissed due to debtor's failure to make plan payments; and

Case No. 08-38851, dismissed due to debtor's failure to make plan payments.

The longest a chapter 13 case was pending was approximately 9 months. None were successful. And, in all but two cases, the debtor was represented by counsel. The cases with counsel were no more successful than the cases without counsel.

A comparison of the debtor's schedules filed in Case No. 13-25864 (the first chapter 13 case filed after the debtor's chapter 7 discharge in 2010) to those filed in this most recent case reveals that her secured debt has increased by approximately \$18,000, priority debt by \$18,000 and unsecured debt by \$9,000. Hence, despite the numerous petitions the debtor's financial situation has deteriorated rather than improved.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must

demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

This motion basically states that this case is more likely to be successful because the debtor now has an attorney. As explained above, this argument is hollow given the debtor's history in this court. This is not a substantial change in circumstances.

THE FINAL RULINGS BEGIN HERE

17. 15-25105-A-13 FLORA NANCA MOTION TO
PGM-1 CONFIRM PLAN
9-28-15 [52]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

18. 15-22916-A-13 STEPHEN GRIFFIN MOTION TO
PGM-1 MODIFY PLAN
9-29-15 [23]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

19. 15-25317-A-13 NICHOLAS/HOLLY MCKINNEY MOTION TO
EWV-73 CONFIRM PLAN
9-24-15 [33]

Final Ruling: The motion will be dismissed without prejudice.

A review of the certificate of service reveals that no creditors were served with the plan and the motion to confirm it as is required by Fed. R. Bankr. P. 2002(b). While the certificate references an attached list, none is attached.

20. 15-27319-A-13 TARA AUSTIN OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-21-15 [17]

Final Ruling: The trustee has voluntarily dismissed the objection and the related counter motion.

21. 15-27845-A-13 STEVEN HADDOX ORDER TO
SHOW CAUSE
10-20-15 [17]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

When the petition was filed, the filing fee was not tendered and the debtor did not request permission to pay that fee in installments. The failure to pay the filing fee is cause for dismissal. However, after issuance of the order to show cause, the filing fee was paid in full. No prejudice resulted from the delay in payment.

22. 13-31048-A-13 HERBERT EDWARDS MOTION TO
SDB-1 MODIFY PLAN
9-24-15 [24]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

23. 15-26653-A-13 VIRGINIA GROCE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-23-15 [14]

Final Ruling: The trustee has voluntarily dismissed the objection and the related counter motion.

24. 15-27153-A-13 D. BRENT JACK OBJECTION TO
GLM-1 CONFIRMATION OF PLAN
LINDA/JAMES HOLLOWAY VS. 10-22-15 [24]

Final Ruling: It appearing that the debtor has filed a prior case, Case No. 15-22302, and it appearing that issues raised in the prior case are again allegedly present in this case, the case will be transferred to Judge Christopher M. Klein, the judge presiding in the first case. This hearing is continued to November 17, 2015 at 2:00 PM. Counsel for the objecting creditors is to give notice of the continued hearing.

25. 15-27263-A-13 RAMON/SUSAN JOHNSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-21-15 [23]

Final Ruling: The trustee has voluntarily dismissed the objection and the

related counter motion.

26. 15-20565-A-13 REV KENNETH ANDERSON MOTION TO
KG-9 APPROVE COMPENSATION OF DEBTOR'S
ATTORNEY
9-17-15 [107]

Final Ruling: The motion will be dismissed without prejudice.

A review of the certificate of service reveals that the debtor was not served with the motion as is required by Fed. R. Bankr. P. 2002(a)(6).

27. 15-26069-A-13 ALEJANDRO/ANA MARIE MUTUC MOTION TO
RHM-1 CONFIRM PLAN
9-17-15 [23]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted and the objection will be overruled on the condition that the monthly plan payment is increased to \$224.12. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

28. 15-26971-A-13 VICTOR/DEBRA GIVHAN MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
HYUNDAI MOTOR FINANCE VS. 10-7-15 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has confirmed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

29. 15-23873-A-13 JACQUELINE FREEMAN MOTION TO
DRE-2 CONFIRM PLAN
10-9-15 [33]

Final Ruling: The motion will be dismissed without prejudice.

A review of the certificate of service reveals that no creditors were served with the plan and the motion to confirm it as is required by Fed. R. Bankr. P. 2002(b). While the certificate references an attached list, none is attached.

30. 15-20976-A-13 JESSIE FAILS MOTION TO
SJS-1 MODIFY PLAN
9-16-15 [21]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

31. 15-20976-A-13 JESSIE FAILS OBJECTION TO
SJS-2 CLAIM
VS. INTERNAL REVENUE SERVICE 9-17-15 [27]

Final Ruling: This objection to the proof of claim of the Internal Revenue Service has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim will be disallowed to the extent it includes a demand for 2014 income taxes. The proof of claim estimates that the debtor owes \$100 for 2014. However, the filed return shows no liability.